

**UNITED STATES COURT OF APPEALS  
FOR THE SECOND CIRCUIT**

**SUMMARY ORDER**

RULINGS BY SUMMARY ORDER DO NOT HAVE PRECEDENTIAL EFFECT. CITATION TO SUMMARY ORDERS FILED AFTER JANUARY 1, 2007, IS PERMITTED AND IS GOVERNED BY THIS COURT'S LOCAL RULE 32.1 AND FEDERAL RULE OF APPELLATE PROCEDURE 32.1. IN A BRIEF OR OTHER PAPER IN WHICH A LITIGANT CITES A SUMMARY ORDER, IN EACH PARAGRAPH IN WHICH A CITATION APPEARS, AT LEAST ONE CITATION MUST EITHER BE TO THE FEDERAL APPENDIX OR BE ACCOMPANIED BY THE NOTATION: "(SUMMARY ORDER)." A PARTY CITING A SUMMARY ORDER MUST SERVE A COPY OF THAT SUMMARY ORDER TOGETHER WITH THE PAPER IN WHICH THE SUMMARY ORDER IS CITED ON ANY PARTY NOT REPRESENTED BY COUNSEL UNLESS THE SUMMARY ORDER IS AVAILABLE IN AN ELECTRONIC DATABASE WHICH IS PUBLICLY ACCESSIBLE WITHOUT PAYMENT OF FEE (SUCH AS THE DATABASE AVAILABLE AT [HTTP://WWW.CA2.USCOURTS.GOV/](http://www.ca2.uscourts.gov/)). IF NO COPY IS SERVED BY REASON OF THE AVAILABILITY OF THE ORDER ON SUCH A DATABASE, THE CITATION MUST INCLUDE REFERENCE TO THAT DATABASE AND THE DOCKET NUMBER OF THE CASE IN WHICH THE ORDER WAS ENTERED.

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 27<sup>th</sup> day of March, two thousand eight.

PRESENT:

HON. SONIA SOTOMAYOR,  
HON. DEBRA A. LIVINGSTON,  
*Circuit Judges,*  
HON. LORETTA A. PRESKA,  
*District Judge.*<sup>1</sup>

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DAN ZHU WONG,  
*Petitioner,*  
-V.-

UNITED STATES DEPARTMENT OF  
HOMELAND SECURITY, MICHAEL B.  
MUKASEY,<sup>2</sup>  
*Respondents.*

No. 06-3568-ag

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<sup>1</sup> The Honorable Loretta A. Preska, United States District Court for the Southern District of New York, sitting by designation.

<sup>2</sup> Pursuant to Federal Rule of Appellate Procedure 43(c)(2), Attorney General Michael B. Mukasey is automatically substituted for former Attorney General Alberto R. Gonzales as a respondent in this case.

1 FOR PETITIONER: Dan Zhu Wong, *pro se*, New York, New York.

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3 FOR RESPONDENTS: Peter D. Keisler, Assistant Attorney General, Civil  
4 Division; M. Jocelyn Lopez Wright, Assistant  
5 Director, Office of Immigration Litigation; Song E.  
6 Park, Attorney, United States Department of Justice,  
7 Washington, D.C.  
8

9 UPON DUE CONSIDERATION of this petition for review of a Board of Immigration  
10 Appeals (“BIA”) decision, it is hereby ORDERED, ADJUDGED, AND DECREED that the  
11 petition for review is DENIED.

12 Petitioner Dan Zhu Wong, a citizen of the People’s Republic of China, seeks review of a  
13 July 6, 2006 order of the BIA affirming the November 24, 2004 decision of Immigration Judge  
14 (“IJ”) Elizabeth A. Lamb, denying Wong’s application for asylum, withholding of removal, and  
15 relief under the Convention Against Torture (“CAT”). *In re Dan Zhu Wang a.k.a. Dan Zhu*  
16 *Wong*, No. A 78 294 692 (B.I.A. July 6, 2006), *aff’g* No. A 78 294 692 (Immig. Ct. N.Y. City  
17 Nov. 24, 2004). We assume the parties’ familiarity with the underlying facts and procedural  
18 history of this case.

19 When the BIA adopts the decision of the IJ and supplements the IJ’s decision, this Court  
20 reviews the decision of the IJ as supplemented by the BIA. *See Yan Chen v. Gonzales*, 417 F.3d  
21 268, 271 (2d Cir. 2005). This Court reviews the agency’s factual findings under the substantial  
22 evidence standard. *See Zhou Yun Zhang v. INS*, 386 F.3d 66, 73 & n.7 (2d Cir. 2004), *overruled*  
23 *in part on other grounds by Shi Liang Lin v. U.S. Dep’t of Justice*, 494 F.3d 296, 305 (2d Cir.  
24 2007) (en banc). We review *de novo* questions of law and the application of law to undisputed  
25 fact. *See, e.g., Secaida-Rosales v. INS*, 331 F.3d 297, 307 (2d Cir. 2003).

1  
2 **I. Wong's Religious-Persecution Claim**

3 Substantial evidence supports the agency's determination that Wong failed to meet her  
4 burden of proving either past persecution or a well-founded fear of persecution in China based on  
5 her alleged religious beliefs and affiliation with the Mormon church. The agency reasonably  
6 deemed her testimony incredible based in part on inconsistencies between her testimony and  
7 written asylum application. In particular, while Wong stated in her asylum application that she  
8 began work in a shoe factory in her own village in February 1998, she testified that because of  
9 her religious beliefs she was prevented by the village head from finding a job in the village where  
10 she lived. Moreover, Wong's testimony concerning the duration of her employment at the shoe  
11 factory was internally inconsistent: she stated at one point that she worked at the factory for two  
12 years, and at another point stated that she worked there from 1998 until 2002. Because these  
13 inconsistencies were material to Wong's claim that her religious practice interfered with her  
14 ability to find employment, it substantiated the agency's adverse credibility determination. *See*  
15 *Secaida-Rosales*, 331 F.3d at 308.

16 Once Wong's credibility was called into doubt, the agency reasonably found that her  
17 corroborating evidence was insufficient to rehabilitate her testimony. *See Zhou Yun Zhang*, 386  
18 F.3d at 78. First, the IJ reasonably gave diminished weight to letters Wong submitted from her  
19 mother and a church member from China because, in contrast to Wong's testimony, neither letter  
20 referenced any damage to their church. *Xiao Ji Chen v. U.S. Dep't of Justice*, 471 F.3d 315, 342  
21 (2d Cir. 2006) (holding that the weight afforded to documentary evidence "'lies largely' within the  
22 discretion of the IJ" (alternation omitted)); *see also Singh v. BIA*, 438 F.3d 145, 148 (2d Cir.

1 2006). Likewise, the agency reasonably afforded “very little” weight to a letter Wong provided,  
2 allegedly from the branch president of the Mormon church she attended in New York, because  
3 Wong was unable to identify the author of the letter and the letterhead contained a misspelling of  
4 “New York State.” *Id.*; *see also Zaman v. Mukasey*, --- F.3d ---, 2008 WL 183423, \*3 (2d Cir.  
5 Jan. 23, 2008) (finding it reasonable for the IJ to infer that an applicant’s document was fraudulent  
6 because that “inference [was] made available . . . by the record facts”) (alteration in original).

7 Accordingly, we uphold the agency’s denial of Wong’s religious-persecution claim.<sup>3</sup>

## 8 **II. Wong’s Family-Planning Claim**

9 Substantial evidence also supports the agency’s determination that Wong failed to  
10 establish asylum eligibility based on the birth of her two children in the United States. Wong’s  
11 claim that the IJ abdicated its factfinding responsibility by not specifically addressing the 2004  
12 State Department Country Report is meritless. The agency need not “‘expressly parse or refute on  
13 the record’ each individual argument or piece of evidence offered by the petitioner.” *Wei Guang*  
14 *Wang v. BIA*, 437 F.3d 270, 275 (2d Cir. 2006). In any event, nothing in the report indicates that  
15 Wong will be subject to China’s coercive population control policies on account of her United  
16 States born children. *See Huang v. INS*, 421 F.3d 125, 129 (2d Cir. 2005) (stating that an  
17 applicant’s well-founded fear claim based on United States-born children was “speculative at

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<sup>3</sup> In light of the forgoing, we need not reach the issue of whether, in deeming Wong’s story incredible, the agency also reasonably relied on the fact that Wong could not identify the Mormon church’s founder, nor any of the church’s symbols. *See Yose Rizal v. Gonzales*, 442 F.3d 84, 90 (2006) (cautioning that an individual who lacks “detailed knowledge” about a religion’s doctrinal tenets may nevertheless be persecuted for her religious affiliation). Even if the IJ erred in this regard, a remand for reconsideration of Wong’s religious-persecution claim would be futile because we can confidently predict based on the record as a whole that the agency would reach the same conclusion after correcting for any error. *Xiao Ji Chen*, 471 F.3d at 339.

1 best” when he failed to present “solid support” that he would be subject to the family planning  
2 policy upon his return to China); *see also Wei Guang Wang*, 437 F.3d at 274 (deeming  
3 insufficient to establish changed country conditions the 2004 State Department Country Report on  
4 Human Rights Practices for China and the so-called “Aird affidavit”); *In re J-W-S-*, 24 I. & N.  
5 Dec. 185, 190-91 (BIA 2007) (calling into question whether children born abroad are counted  
6 under China’s family planning policy).

7 To the extent, if any, that the BIA failed to consider the transcript of a 1998 Congressional  
8 hearing or a copy of China’s Nationality Law that Wong submitted for the first time on appeal to  
9 the BIA, we also find no error. *See* 8 C.F.R. § 1003.1(d)(3)(iv) (“A party asserting that the Board  
10 cannot properly resolve an appeal without further factfinding must file a motion for remand.”). In  
11 any event, the evidence submitted on appeal to the BIA was neither newly available, 8 C.F.R. §  
12 1003.2(c)(1), nor do its contents establish a *prima facie* claim for asylum based on United States-  
13 born children.

14 Although Wong asserts that the documents discussed in *Shou Yung Guo v. Gonzales*, 463  
15 F.3d 109 (2d Cir. 2006), may provide evidence of a policy in Fujian Province of forced  
16 sterilization of Chinese nationals with two or more children, we decline to remand on that basis  
17 because those documents are not in the record. *See Xiao Xing Ni v. Gonzales*, 494 F.3d 260, 262  
18 (2d Cir. 2007) (holding that any inherent power to remand to the BIA for the consideration of  
19 additional evidence “should not” be exercised where “[i] the basis for the remand is an instruction  
20 to consider documentary evidence that was not in the record before the BIA; and [ii] the agency  
21 regulations set forth procedures to reopen a case before the BIA for the taking of additional  
22 evidence”) (alteration in original).

Because Wong was unable to show the objective likelihood of persecution necessary for asylum eligibility, she necessarily was unable to meet the higher standard required to succeed on her claims for withholding of removal and relief under the CAT, which rested on the same factual predicates. *See Paul v. Gonzales*, 444 F.3d 148, 156 (2d Cir. 2006).

For the foregoing reasons, the petition for review is DENIED.

For the Court:  
Catherine O'Hagan Wolfe, Clerk

By: \_\_\_\_\_